



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MTI - 206655

PRELIMINARY RECITALS

Pursuant to a petition filed on October 24, 2022, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Dodge County Human Services regarding Medical Assistance (MA), a hearing was held on December 15, 2022, by telephone.

The issue for determination is whether the agency correctly seeks to intercept petitioner's future state tax refunds and/or credits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
By: Lisa Hoffman
Dodge County Human Services
199 Cty Rd DF
Juneau, WI 53039

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County.
2. On June 7, 2018, the agency issued to petitioner an About Your Benefits notice informing him that effective July 1, 2018, he was enrolled in BadgerCare Plus.

3. On March 12, 2019, the agency issued to petitioner informing him that effective March 1, 2019, he was enrolled in BCP.
4. On December 11, 2019, the agency issued to petitioner a BadgerCare Plus Overpayment notice, informing him that he was paid BCP benefits to which he was not entitled, for the period from September 1, 2018 to September 30, 2019, in the amount of \$2,391.61 as a result of member error.
5. On January 3, 2020, the agency issued to petitioner a BCP repayment agreement regarding the MA overpayment debt that was established. It instructed petitioner to pay the debt in full or enter into a repayment agreement by January 25, 2020.
6. On February 12, 2020, an Administrative Law Judge in the Division held a hearing regarding the BCP overpayment and issued a decision on March 27, 2020 in which he upheld the agency's overpayment determination and dismissed the appeal.
7. On October 14, 2022, the agency issued to petitioner an Important notice about Your State Tax Refund and Credits, informing him that an unpaid public assistance debt in the amount of \$2,391.61 may be intercepted from tax refunds or credits due to him then or in the future. The debt was for Medical Assistance benefits in claim [REDACTED] in the amount of \$1,083.62 and [REDACTED] in the amount of \$1,307.99.
8. The agency issued to petitioner a series of dunning notices regarding the debt.
9. On October 26, 2022, the Division received petitioner's request for hearing.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat. §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's BadgerCarePlus (BCP) Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

In this case the petitioner appealed the overpayment determination to the Division and the determination was upheld. The correctness of the overpayment determination has been adjudicated. When an individual files a timely hearing request following receipt of a properly issued notice of state tax intercept, the procedures and scope of the hearing are set forth by statute as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the [Division of Hearings and Appeals] ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

Wis. Stat. §49.85(4)(a).

The overpayment determination is not at issue in this hearing.

Petitioner challenges the Department's subsequent collection of those claims via the intercept of his state income tax return. Wis. Stat. §49.85(2)(a) provides that the Department of Health Services shall, at least annually, certify to the Department of Revenue the amounts that it has determined it may recover from recipients to collect past due public assistance debt including BadgerCare Plus benefits that were incorrectly issued. This certification to the Department of Revenue permits the Department of Health Services to intercept an individual's state income tax refunds and/or credits.

Prior to certifying that an individual owes a past due public assistance debt, the Department of Health Services must: (1) properly notify the individual of its intent to setoff the individual's state tax refund; (2) wait until the tax intercept action either has not been or is no longer under appeal; and (3) bring an action to enforce the liability or issue an order to compel payment of the liability; and, if the debtor fails to comply with the order, obtain a judgement from a circuit court. See Wis. Stat. §49.85(2) and §49.497(1m).

Petitioner testified that he did not make payments toward the BCP debt. His testimony was entirely credible. He explained that when he received the Division's decision regarding his overpayment appeal, he believed that the overpayment was "dismissed." He was incorrect. It was his appeal that was dismissed. However, this misunderstanding led petitioner to ignore any obligation toward repayment.

The agency presented no evidence regarding certification of the debt to the Department of Revenue. All of the agency's evidence was relevant to the overpayment determination, not repayment, however petitioner conceded that he paid none of the debt. I find, based on petitioner's testimony, that the agency correctly issued the notice of tax intercept.

CONCLUSIONS OF LAW

The agency correctly issued a tax intercept notice to petitioner.

THEREFORE, it is

ORDERED

That the petition for review is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

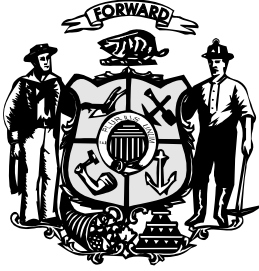
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 23rd day of January, 2023

\s 

Beth Whitaker
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 23, 2023.

Dodge County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability